

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

KENDRA HANKERD,

Plaintiff,

v.

STATE OF TENNESSE and FEDERAL
BUREAU OF INVESTIGATION,

Defendants.

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Case No. 6:19-CV-195-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

The above entitled and numbered civil action was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. Docket No. 5. Plaintiff Kendra Hankerd (“Plaintiff”), proceeding pro se, filed a Complaint on May 6, 2019, against Defendants the State of Tennessee and the Federal Bureau of Investigations (collectively referred to as “Defendants”). Docket No. 2. Plaintiff has also sought leave to proceed *in forma pauperis*. Docket No. 3. On May 9, 2019, the Magistrate Judge issued his Report and Recommendation (Docket No. 6), recommending that this action be dismissed with prejudice as frivolous. On May 28, 2019, Plaintiff filed initial Objections to the Report and Recommendation requesting an extension of time in order to seek advice of counsel. Docket No. 7 at 3–4. The Court granted Plaintiff an extension until June 30, 2019, to seek counsel for this case. Docket No. 9. No counsel for Plaintiff ever entered an appearance in this case, however, and Plaintiff filed further Objections on June 20, 2019. Docket 10.

The Court reviews de novo the portions of the Magistrate Judge’s findings to which objections have been raised. 28 U.S.C. § 636(b)(1). Having reviewed the Magistrate Judge’s

findings and Plaintiff's objections, the Court **OVERRULES** Plaintiff's Objections (Docket Nos. 7 & 10) and **ADOPTS** the Magistrate Judge's Report and Recommendation (Docket No. 6) as the findings of the Court. As the Magistrate Judge found, dismissal is appropriate pursuant to 28 U.S.C. § 1915(e)(2)(B) because Plaintiff's claims are frivolous.

LEGAL STANDARD

The Court reviews objected-to portions of the Magistrate Judge's Report and Recommendation de novo. *See* Fed. R. Civ. P. 72; 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). A court conducting a de novo review examines the entire record and makes an independent assessment under the law. *Douglass v. United States Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

ANALYSIS

In her Complaint, Plaintiff makes a variety of allegations. Docket No. 2. As an initial matter, Plaintiff claims that her cause of action arises pursuant to exceptions to tort law under 28 U.S.C. § 2690(a)(h), which the Court understands to be 28 U.S.C. § 2680(a) and 28 U.S.C. § 2680(h). Docket No. 2, at 1–2. Plaintiff also pleads eight specific causes of actions: (1) illegal arrest; (2) electronic harassment; (3) negligence/wrongful act; (4) federal civil rights; (5) data breach; (6) abuse of authority; (7) violation of humans; and (8) violation of amendments. *Id.* at 42–53. Plaintiff factually alleges that her electronic accounts and devices have been hacked and she has received messages indicating she has been stalked. *Id.* at 28–40. Moreover, Plaintiff claims that she has made reports regarding the stalking and hacking to both the Federal Bureau

of Investigations (FBI) and Tennessee law enforcement. *Id.* Many of Plaintiff's allegations overlap with her claims in Case No. 6:18-cv-00204-JDK-JDL and Case No. 6:19-cv-00063-JDK-JDL, both of which have been dismissed by this Court. After reviewing Plaintiff's pleading, the Magistrate Judge recommended this action be dismissed as frivolous.

After reviewing Plaintiff's objections and the relevant pleadings and filings in this case, the Court agrees with the Magistrate Judge's determination that this action is frivolous. Accordingly, the Court finds that the Magistrate Judge appropriately determined Plaintiff's claims to be frivolous and recommended dismissal of this action. *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992).

CONCLUSION

Having made a de novo review of the objected-to portions of the Report and Recommendation (Docket No. 6), the Court finds, for the reasons explained above, that Plaintiff's Objections (Docket Nos. 7 & 10) should be **OVERRULED** and the Magistrate Judge's Report (Docket No. 6) should be **ADOPTED**. This action is **DISMISSED WITH PREJUDICE** as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). As the Magistrate Judge noted, a case dismissed as frivolous or malicious under the *in forma pauperis* statute should be deemed to be dismissed with prejudice. *Marts v. Hines*, 117 F.3d 1504, 1506 (5th Cir. 1997) (en banc). Furthermore, the Court **ORDERS** that all other pending motions be **DENIED** as **MOOT**. Finally, the Court notes that this is the third lawsuit Plaintiff has filed relating to these claims, which have all been dismissed by this Court. Plaintiff is warned that if she continues to file frivolous actions in this Court, filing restrictions may be imposed. To the extent Plaintiff disagrees with the Court's determination or believes the Court committed error in this case, or any of her prior cases, filing additional lawsuits based on the same claims is not the appropriate remedy. Instead Plaintiff may

appeal the Final Judgment of this Court to the United States Court of Appeals for the Fifth Circuit.

So **ORDERED** and **SIGNED** this **8th** day of **July, 2019**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE